Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANGEL SULLIVAN-BLAKE, et al.,

Plaintiffs,

vs.

FEDEX GROUND PACKAGE SYSTEM, INC.,

Defendant.

Civil Action

No. 18-1698

Transcript of proceedings on January 27, 2021, United States District Court, Pittsburgh, Pennsylvania, before Robert J. Colville, District Judge

APPEARANCES:

For the Plaintiffs: Shannon Liss-Riordan, Esq.
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get discovery from as many opt-ins as possible for a couple reasons. One is because they want to deter people from participating in the case, that's the number one option. Inevitably a lot of people who were chosen to participate in discovery simply won't do it. A lot of people opted in. If they're told that they need to take further action in the case, a lot of them just won't do it.

So this is the way that defendants try to weed people out of these large collective actions. And, of course, the whole purpose of the FLSA collective action mechanism is to allow people who have claims under the FLSA to have them pursued by representatives who are willing to do the work and work with counsel and be involved in the legal proceeding.

The other thing that I just want to point out here that's interesting is that for some reason -- I am not exactly sure of the genesis of this -- but the case law has diverged for some reason between FLSA cases and Rule 23 opt-out cases where it seems to be somewhat common for large numbers of opt-ins in FLSA cases to go through discovery. Not thousands, I am not aware of any case where so many thousands of opt-ins like FedEx is proposing have gone through discovery. But whereas in Rule 23 cases courts recognize generally that only the named plaintiffs get deposed and very rarely do unnamed class members get -- I am sorry, go through discovery. Depositions, we are not even talking about depositions yet.

As a practical matter, what we want to do is put a schedule in place that will move this case toward trial and be realistic. Another reason that defendants often seek discovery from such broad groups of people is that that can delay a case because taking discovery from thousands of people would obviously be extremely time-consuming and that might make it unclear when we would ever see a trial in this matter. But we would like to actually be looking forward to when a trial may be set in this matter. It would be great if we could start talking about when the Court envisions that happening. Then we can all work expeditiously toward that.

As a practical matter, at a trial you are not going to have thousands of opt-ins testifying at a trial. You are not going to see hundreds of opt-ins testify at a trial. Even for very large collective actions at most the number of opt-ins who testify have been more in the dozens or tens or even less than that.

So we think that our offer of FedEx starting with discovery of 500 opt-ins is very generous, it's far more people than would ever actually testify at trial, and thus would be more than sufficient to allow FedEx to prepare its defense of the case.

FedEx acknowledges that it is not even trying to get so-called statistical significance. It claims that even its proposal wouldn't allow it to get statistically

THE COURT: Thank you very much. I have a very quick question, maybe dumb question. The argument today is simply the number of plaintiffs? We're not talking about scope of the discovery? Have you seen the written discovery that's been propounded?

MS. LISS-RIORDAN: Yes. It is a questionnaire. So we are going through a similar process right now in the case that we have pending in Massachusetts that just concerns Massachusetts drivers, that is the Roy versus FedEx case. The same counsel are involved -- well, it is our firm and Ms. Scott just for Massachusetts drivers.

So in that case where we have about 500 some odd opt-ins, the Court ordered this written discovery for 50. We have been going through this process of doing the discovery for 50. So we have used FedEx's questionnaire on the 50.

I will say it's been very hard, we have been working very hard, our associates and our paralegals have been working very hard on responding to discovery even for 50, and it has been very difficult. Because it's just hard to get people who opted into a case who understood that somebody else was going to be prosecuting the case for them to actually engage in discovery.

So, again, we are having a battle there about those who are not responsive to the discovery are going to be dismissed from the case.

there is just no need to dig into this level of discovery of thousands of drivers.

Ms. Scott and FedEx are going to have plenty of discovery and information that they will need to prepare their motion for decertification. The issues that she's thrown out are examples of the kind of arguments that I am sure they will make in their motion for decertification. If they get questionnaires back from 500 drivers, I am sure there will be ample examples that they can use to make the kinds of qualitative arguments that they are going to make to the Court about why the case should be decertified.

It is going to come down to essentially a legal question, I believe, that the Court is going to need to make about whether or not those kinds of differences that FedEx is going to come up with from this discovery are material to the issue of whether FedEx is a joint employer of these drivers. We're expecting to show through common evidence about what FedEx's practices actually are, that show that FedEx really is the employer of these drivers.

Ms. Scott's argument again about how you need to look much more closely at everyone's situation regarding whether or not they were paid overtime or how they should have been paid overtime, I mean, if you are going to get to that level of detail, it's just a different question than what we are looking at at the outset.

Even FedEx's proposal of taking discovery from three or four or six or seven thousand drivers won't get the answer for them for everyone. The argument she was just making really sounded like a decertification argument, not an argument about how much discovery do they need. Getting discovery from 500 drivers is going give them plenty of arguments to you as to why they think that the case should be decertified.

But it is not going to get us any closer to a question on just how many drivers do they need to get the discovery from in order for you to consider these arguments and FedEx to have ample opportunity to make its arguments.

We think this is really going to be a qualitative legal argument, and the amount of discovery we have offered for them to take to get it started is more than enough to get it going. We do want this case to have some planned timeline in effect, otherwise it could take years to do this kind of discovery. It shouldn't take that long.

I will just refer back again to the MDL that did take about a decade regarding the challenge to FedEx's classification of its drivers as independent contractors. It went on for over about ten years. There were cases from most of the 50 states that were combined into a single multidistrict litigation. Yet in all of those years that that case proceeded for, no more than I believe a few hundred